State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:	)	
	)	
JAMES EDWARD PHILLIPS,	)	**Case No. 12-0406336C**
	)	
Applicant.	)	

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On April 19, 2012, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to James Edward Phillips. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Upon information and belief, James Edward Phillips, ("Phillips") is currently a Missouri resident with a residential address of 3209 Yale Boulevard, St. Charles, Missouri 63301.

2. On December 5, 2011, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Phillips's Application for Motor Vehicle Extended Service Contract Producer License ("Application").

3. Background Question No. 1 of the Application asks the following:

   Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

   "Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license or juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

"Had a judgment withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt is made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence—sometimes called an "SIS" or "SES").

If you answer yes, you must attach to this application:
a) a written statement explaining the circumstances of each incident,
b) a copy of the charging document, and
c) a copy of the official document which demonstrates the resolution of the charges or any final judgment[.]

4. Phillips marked "Yes" to Question No. 1, and reported that he had been convicted of felonies in Case Nos. 0711- CR07237-01 and 1111-CR03277-01.

5. Although Phillips did not provide copies of the charging documents, copies of the official documents which demonstrate the resolution of the charges, or copies of any final judgments, the Department was able to verify the following:

   a. On January 30, 2009, Phillips pled guilty to DWI – Combined Alcohol/Drug Intoxication – Persistent Offender, a Class D Felony, in violation of §577.010.[1] The court suspended the execution of the sentence and placed Phillips on supervised probation for five years. In the same case, Phillips also pled guilty to Operated Motor Vehicle on Highway While Driver's License/Privilege Revoked, a Class D Felony, in violation of § 302.321. The court sentenced Phillips to thirty days incarceration. *State v. James E. Phillips*, St. Charles Co. Cir. Ct., Case No. 0711-CR07237-01.

   b. On January 19, 2012, Phillips pled guilty to Operated Motor Vehicle on Highway While Driver's License/Privilege Revoked, a Class D Felony, in violation of § 302.321. The court suspended the execution of the sentence, placed Phillips on supervised probation for five years to run consecutive to the supervised probation imposed in Case No. 0711-CR07237-01, and sentenced Phillips to serve 120 days shock incarceration with work release authorized, to run concurrently with the shock incarceration imposed in Case No. 0711-CR07237-01. *State v. James Edward Phillips*, St. Charles Co. Cir. Ct., Case No. 1111-CR03277-01.

   c. On January 19, 2012, as a result of a Probation Violation Hearing in Case No. 0711-CR07237-01, Phillips was ordered to continue his supervised probation and sentenced to serve 120 days shock incarceration with work release authorized to run concurrently with the shock incarceration imposed in Case No. 1111-CR03277-01. *State v. James E. Phillips*, St. Charles Co. Cir. Ct., Case No. 0711-CR07237-01.

[1] All statutory references are to the 2011 Supplement to the Revised Statutes of Missouri unless otherwise noted.

6. Background Question No. 4 of the Application asks, in relevant part:

"Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement?"

7. Phillips marked "Yes" to Question No. 4, and reported the following:

a. On September 28, 2009, the St. Charles County Circuit Court entered judgment against Phillips as follows:

[Department of Revenue] hereby certifies that the following assessment of individual income tax, interest, additions to tax, penalties, and fees have been made and become final in the amount of $1,124.21. Interest continues to [accrue] as provided by law until the full amount of the tax liability is paid.

Department of Revenue v. James E. Phillips, St. Charles Co. Cir. Ct., Case No. 0911-MC01508.

CONCLUSIONS OF LAW

8. Section 385.209 provides, in part:

1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

* * *

(5) Been convicted of any felony;

* * *

(13) Failed to comply with any administrative or court order directing payment of state or federal income tax[.]

9. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, is not to punish licensees or applicants, but to protect the public, *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984), the purpose of § 385.209 is not to punish applicants for a motor vehicle extended service contract producer license, but to protect the public.

10. Phillips may be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(5) because he has been convicted of three felonies:

    a. *State v. James E. Phillips*, St. Charles Co. Cir. Ct., Case No. 0711-CR07237-01 (DWI – Combined Alcohol/Drug Intoxication – Persistent Offender, a Class D Felony, in violation of §577.010).

    b. *State v. James E. Phillips*, St. Charles Co. Cir. Ct., Case No. 0711-CR07237-01 (Operated Motor Vehicle on Highway While Driver's License/Privilege Revoked, a Class D Felony, in violation of § 302.321).

    c. *State v. James Edward Phillips*, St. Charles Co. Cir. Ct., Case No. 111- CR03277-01 (Operated Motor Vehicle on Highway While Driver's License/Privilege Revoked, a Class D Felony, in violation of § 302.321).

11. Phillips may also be refused a motor vehicle extended service contract producer license pursuant to § 385.209.1(13) because he failed to comply with an administrative or court order directing payment of state income tax. *Department of Revenue v. James E. Phillips*, St. Charles Co. Cir. Ct, Case No. 0911-MC01508.

12. The Director has considered Phillips's history and all of the circumstances surrounding Phillips's Application. Granting Phillips a motor vehicle extended service contract producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion to refuse Phillips's motor vehicle extended service contract producer license.

13. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service producer license application of **James Edward Phillips** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 23RD **DAY OF** APRIL **, 2012.**

JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April, 2012 a copy of the foregoing Order and Notice was served upon the Applicant in this matter by regular and certified mail at the following address:

James Edward Phillips
3209 Yale Boulevard
St. Charles, MO 63301

Certified No. 7009 3410 0001 8931 3032

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